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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,475	11/20/2001	Vladislav Olchanski	58367.000003	2706

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EXAMINER

TANG, KAREN C

ART UNIT	PAPER NUMBER
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2451

MAIL DATE	DELIVERY MODE
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01/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/996,475

Applicant(s)

OLCHANSKI ET AL.

Examiner

KAREN C. TANG

Art Unit

2451

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-30.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Larry D Donaghue/
Primary Examiner, Art Unit 2454

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the invention was conceived before May 15, 2000 and argued that the invention was duly diligent from the day of conception to the filing of the application, Nov. 21, 2001 (i.e., constructive reduction to practice).

Examiner disagrees. As stated on pages 2-9 in the final office action mailed on 11/12/2008, the supporting information (Declaration submitted) fails to establish due diligence from the alleged conception to the constructive reduction of practice. Therefore, applicant has not met the burden of establishing conception with due diligence, thus the rejection is maintained.

Applicant argues it is not obvious to combine Gatt in view of Menzie in further view of Lin.

Examiner disagrees.

Gatt discloses the limitations as follows:

at least one processor readable medium (computer 44, refer to Col 7, Lines 24);

instructions carried on the at least one processor readable medium (computer 44, refer to Col 7, Lines 24);

wherein the instructions are configured to be readable from the at least one processor readable medium by at least one processor and thereby cause the at least one processor to operate (computer, refer to Col 7, Lines 24) so as to:

collecting first outcomes data sets for one or more indicators associated with one or more medical procedures (records test data, refer to Abstract, the data is in the form of the significant parameters/indicators of the medical procedures, such as cardiac, pulmonary, and physical characteristics, refer to Col 1, Lines 35-40) for a plurality of patients (large numbers of individuals) in a first period of time (during the time when the data are collected) via one or more user interface (data is extracted from the sensor/interface on the exercising machine, refer to abstract and Col 2, Lines 5) located at one or more user entities (sensors located on the machine location of the clinic, refer to abstracts);

establishing a norm based at least in part on an outcomes data group (establish norm, refer to abstract), the outcomes data group comprising a plurality of the first outcomes data sets for the one or more indicators associated with one of the one or more medical procedures for the plurality of individuals (see abstracts);

collecting second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the individual in a second period of time via the one or more user interface located at the one or more user entities (collects the information associated with medical procedures from the patient, refer to Col 7, Lines 12-19 during a period of the time after the norm is established, refer to Col 7, Lines 36 at a clinic);

converting at least some of the second outcomes data sets (one data set) for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals into at least one outcomes result (data collected are converted into curve, refer to Col 7, Lines 56);

comparing a selected one of the at least one outcomes result to the norm (refer to Col 7, Lines 29-35); and

generating at least one outcomes monitoring report comprising the selected one of the at least one outcomes result and the norm (printout the results vs the norm, refer to Col 7, Lines 29-60);

wherein the one or more indicators including at least one of verbal responses, measured analytical data, and observation of a third-party observer (refer to Col 6, Lines 70-75);

Although Gatts disclosed the invention substantially as claimed, Gatts is silent in regarding "the second outcomes data sets are collected from plurality of individuals."

Menzie, discloses a similar teaching of collecting data associated with medical procedures comprising: "collecting second outcomes data sets are collected from a plurality individuals (each collecting devices located at different medical facility, refer to Col 3, Lines 65-67. Each device collects patients' medical condition information Col 2, Lines 10-11 and analyzes the data to provide the test result (convert the second outcomes data), refer to Col 2, Lines 15-18)."

Therefore, the combination of Gatts, Menzie and Lin disclose the limitation, and have satisfied the prima facie case of obviousness.

Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gatts and Menzie because Menzie's teaching of "collecting second outcomes data sets are collected from a plurality individuals" would improve Gatts's system by efficiently collect medical data from geographically dispersed devices and process it in the efficient manner (supported by Lin Col 2, lines 60-67).

Therefore, the applicant's arguments are not persuasive.